In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 492

CHARLES W. HEFELMAN, PETITIONER

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 2–7) is reported at 378 F. 2d 109. The district court wrote no opinion.

JURISDICTION

The opinion of the court of appeals was filed May 24, 1967. The petition for a writ of certiorari was filed on August 15, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the determination by the Secretary of the Interior that petitioner does not qualify as "husband"

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under the terms of the will of an Indian leaving a restricted estate, is final and conclusive and thus not subject to judicial review.

STATUTE INVOLVED

The Act of June 25, 1910, 36 Stat. 855, as amended, 25 U.S.C. 372–373, provides:

> SEC. 1. When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive. * * *
>
> SEC. 2. Any persons of the age of twenty-one years having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior: *Provided, however,* That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: *Provided further,* That the Secretary of the In-

terior may approve or disapprove the will either before or after the death of the testator, * * *.

STATEMENT

Louise Wilson, a Quapaw Indian, died leaving a restricted estate of $37,609.95 (R. 8), under a will approved by the Department of the Interior, which disposed of the entire estate subject to the provision that, in the event she remarried,[1] her husband should receive one-third of her estate.

Petitioner claimed to be decedent's common-law husband at the time of her death. After hearing conflicting evidence, a Bureau of Indian Affairs hearing examiner rejected the claim. In departmental proceedings, that decision was affirmed. Petitioner then commenced this action, requesting that the Secretary's decision be set aside, that petitioner be adjudged the spouse of Louise Wilson, and that one-third of her estate be distributed to him. The judgment of the district court dismissing the complaint was affirmed by the court of appeals on the ground that, under Section 1 of the 1910 Act, *supra,* the departmental decision was not subject to judicial reexamination.

ARGUMENT

The decision below rests upon a construction of the 1910 Act under which the Secretary of the Interior is authorized to supervise the distribution of Indian

[1] Decedent had been married four times previously. She had divorced her fourth husband in June 1952 (R. 9).

estates. Since the decision is narrowly confined to analysis of the legislative purpose expressed in that act, the case does not raise the broad question petitioner seeks to present as to the extent, if any, to which the Administrative Procedure Act (5 U.S.C. 701-706 (Supp. II)) vests the federal district courts with jurisdiction to review decisions of the Secretary of the Interior. The crux of the court's decision is that the finality explicitly accorded the Secretary's determination under Section 1 of the 1910 Act in the case of intestacy must rationally also be accorded such determinations under Section 2 with respect to testate succession. We do not believe that that decision is one of such importance as to warrant further review by this Court.

Nor does the decision create any conflict between the circuits. *Homovich* v. *Chapman*, 191 F. 2d 761 (C.A. D.C.), on which petitioner relies (Pet. 7),[2] involved the validity of a will; here the only question was whether petitioner was the husband of the decedent and thus entitled to take under an unquestionably valid will. Moreover, as the court of appeals pointed out (Pet. App. 5), the more recent decision in *Hayes* v. *Seaton*, 270 F. 2d 319 (C.A. D.C.), indicates that *Homovich* does not have the broad scope attributed to it by petitioner.

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[2] The reference to *Hanson* v. *Hoffman*, 113 F. 2d 780 (C.A. 10), at the bottom of page 7 of the petition, is clearly intended to be to *Homovich* v. *Chapman*, *supra*.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted.

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